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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 29, 2012

10:02 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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(CC: Doc no. 1106) Application of the Examiner for Order Authorizing the Retention and Employment of Mesirow Financial Consulting, LLC as Financial Advisor to the Examiner Nunc Pro Tunc to July 24, 2012 filed by Howard Seife on behalf of Arthur J. Gonzalez, Examiner.

(CC: Doc# 1026, 1212) Motion for Relief from Stay Re: Letter from Julio Pichardo regarding Relief from the Automatic Stay As this Involves Personal Injury.

(CC: Doc# 1014) Motion to Set Last Day to File Proofs of Claim/ Debtors' Application for Order (I) Establishing Deadline for Filing Proofs of Claim and (II) Approving Manner the Form and Manner of Notice Thereof.

Doc# 1094 Motion for Sale of Property under Section 363(b) / Debtors Motion Pursuant to 11 U.S.C. Sections 105, 363 and 365 to (A) Establish Procedures for the Sale or Disposal of De Minimis Assets; and (B) Authorize the Debtors to (I) Pay Related Fees and Expenses and (II) Assume, Assign or Reject Related Executory Contracts and Unexpired Leases.

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RESIDENTIAL CAPITAL, LLC, ET AL.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. All right. We're here
3 on Residential Capital, number 12-12020. Mr. Marinuzzi?

4 MR. MARINUZZI: Good morning, Your Honor. We are here
5 on thankfully, a very short agenda. The first two pages of the
6 agenda reflect hearings that have been adjourned to the
7 September 11th hearing. I wish I could say that the agenda for
8 the September 11th hearing will be short, but I suspect that
9 won't be the case.

10 THE COURT: Well, I'm concerned. Because there have
11 been some requests to add additional matters to September 11th,
12 which is, at this point, very crowded. So no one should
13 expect, at this point, to be asking to have anything added to
14 it. Go ahead.

15 MR. MARINUZZI: We have no intention of asking, Your
16 Honor.

17 The first item on the agenda that's going forward this
18 morning, Your Honor, is the telephonic status conference
19 relating to the state court litigation of GMAC Mortgage v.
20 Silmon.

21 THE COURT: Yes.

22 MR. MARINUZZI: Lawyers for GMAC Mortgage and for Mr.
23 Silman are on the phone. From Bradley Arant, are Blake Goodson
24 (sic) and Jon Patterson. And counsel for the defendant, Ms.
25 Rhonda Hood, is also available on the telephone. We understand

1 that the Court requested that we have a status conference on
2 this matter, so they're on.

3 THE COURT: I did. And let me say at the outset, I
4 received a telephone call last week from Judge Nicole Still,
5 who's the state court judge in Alabama, before whom the matter
6 is pending. Judge Still called and indicated that this matter
7 in which GMAC is the plaintiff and seeks to recover possession
8 of property on which GMAC completed nonjudicial foreclosure in
9 Alabama, is scheduled for trial on September 17th. She also
10 indicated to me that GMAC has made a motion for summary
11 judgment in the case which is pending.

12 In response to GMAC's claim, as I understand it -- and
13 I haven't seen the pleadings -- but what Judge Still told me is
14 that the defendant asserted affirmative defenses and
15 counterclaims. GMAC's motion for summary judgment, as I
16 understand, seeks to strike affirmative defenses and seeks
17 summary judgment with respect to the counterclaims.

18 Judge Still indicated that the affirmative defenses
19 and the counterclaims are essentially -- overlap or duplicative
20 of each other. She also indicated that under Alabama law,
21 claims can be asserted both as affirmative defenses and seek
22 affirmative relief.

23 I sent Judge Still copies of two of my recent
24 decisions on lift stays in this case. I believe I sent her the
25 Corla Jackson opinion and also the Taggart opinion, really just

1 for informational purposes. Judge Still indicated that she had
2 had a conference with the state court counsel in the case and
3 there was uncertainty about what she, Judge Still, could rule
4 on with respect to the summary judgment motions. She also
5 indicated a desire, if possible, to go ahead with the September
6 17th trial, which was described to me as a bench trial.

7 I suggested to Judge Still that she contact counsel in
8 the case and that GMAC's counsel contact Morrison & Foerster
9 and seek to schedule the conference that we're now having. So
10 that is the sum and substance of my conversations with Judge
11 Still. She did not -- I want to make clear -- she did not -- I
12 did not discuss the merits of either GMAC's claim or the merits
13 of the affirmative defenses and counterclaims. She did not
14 indicate how she would rule on any of those pending motions.

15 But she was -- I believe that she indicated that
16 GMAC's counsel had filed -- had done a filing indicating the
17 pendency of the bankruptcy, had provided Judge Still with the
18 supplemental servicing order, and it -- she was still unclear
19 as to what she could go ahead in ruling on. Because of the
20 imminent trial date, I thought we should go forward and get a
21 conference scheduled quickly.

22 I would just note that the Corla Jackson matter, Ms.
23 Jackson is also in Alabama. And in the Jackson matter, GMAC
24 had completed nonjudicial foreclosure. Jackson's action,
25 however, was purely a damages claim against GMAC. But in the

1 course of that opinion, I think -- and I think Mr. Rosenbaum
2 had indicated during argument, acknowledged during argument --
3 that in that Jackson matter, Ms. Jackson, if and when GMAC
4 brought an action to recover possession of the property, that
5 Ms. Jackson could assert any defenses.

6 So that's basically the background of the matter. But
7 I don't know how you want to proceed at this point.

8 MR. MARINUZZI: Your Honor, it remains true in this
9 case as well, to the extent that there's an affirmative defense
10 that also happens to be an affirmative claim, that they would
11 be bringing the same underlying facts; we don't intend that
12 anything in the order would prevent the defendant from raising
13 these facts to defeat the summary judgment motion for
14 possession.

15 And as we struggle to try to understand how there
16 could be a result here that would prejudice the defendant;
17 they're going to allege whatever facts they're going to allege,
18 and if they relate to an affirmative claim, they also would
19 have to relate to an affirmative defense; they're the same
20 facts. And to the extent they don't relate to an affirmative
21 defense, and there are separate affirmative claims that they
22 would be bringing, then there's no real prejudice, if they're
23 not raising them in the context of trying to defeat the summary
24 judgment motion.

25 THE COURT: Well, here's what -- and it was one of the

1 reasons that I sent Judge Still the Taggart opinion. Taggart
2 was Pennsylvania and not Alabama. But in the course of the
3 Taggart opinion, I indicated there that Mr. Taggart could come
4 back and seek to broaden the relief from stay in that if it
5 turned out that judicial efficiency -- that the state court was
6 the appropriate place to deal with the state law with any
7 defenses. And that I think the issue becomes, where the same
8 facts or claims are asserted both as affirmative defenses and
9 as a basis for affirmative relief, judicial efficiency favors
10 doing it only once.

11 And I believe in Taggart, and perhaps in others of the
12 opinions on lift stays, I indicated it might be appropriate in
13 some cases to have a state court fix the amount of the claim.
14 And I don't know enough about this specific matter. I've
15 described, I think, pretty much in full, my conversation with
16 Judge Still.

17 But it certainly sounded to me, particularly with --
18 the thing that separates this from all of the other lift stays
19 that have come before me is this has a September 17th trial
20 date. It arises -- the matter arises on GMAC's lawsuit against
21 the defendant. And I don't have a specific lift stay motion in
22 front of me; but I have to say, just without hearing full
23 argument in the matter, it certainly sounded to me that
24 applying the Sonnax factors, this may be the case where it is
25 appropriate to lift the stay to have the trial go forward

1 before Judge Still.

2 If -- I mean, she hasn't ruled on the summary
3 judgment. I mean, ruling on summary judgment may wipe out
4 those defenses or affirmative claims. I don't know.

5 MR. MARINUZZI: Your Honor, I guess I would have to
6 ask counsel involved in the actual litigation to make sure that
7 we all have the same understanding of the facts. I thought the
8 trial going forward on the 17th was on the actual motion for
9 summary judgment as opposed to on the merits of the counter
10 claims. But I could be mistaken.

11 THE COURT: I -- well, let me hear from counsel for
12 GMAC in Alabama. Just identify yourself on the phone. Are you
13 on the phone? Okay.

14 Who's supposed to be on the phone, Mr. --

15 MR. MARINUZZI: Your Honor, Jon Patterson and Blake
16 Goodson (sic) from the Bradley Arant firm.

17 THE COURT: Mr. Patterson or Mr. Goodson (sic) are you
18 on the phone?

19 And who's supposed to be counsel for the defendant in
20 that case?

21 MR. MARINUZZI: Ms. Rhonda Hood.

22 THE COURT: Ms. Hood, are you on the phone?

23 MS. HOOD: Yes, Your Honor. Myself and my law
24 partner, Ken Lay, who's also on the case, we're both on the
25 phone.

1 THE COURT: Thank you, Ms. Hood. Well, we seem to
2 have a problem, Mr. Marinuzzi.

3 MR. MARINUZZI: I agree we do, Your Honor.

4 THE COURT: Why doesn't one of your colleagues go out
5 in the hall and try and call counsel and find out what's going
6 on here.

7 MR. MARINUZZI: We will do that.

8 THE COURT: I really want to get this -- particularly
9 with a September 17th trial date, this needs to get resolved as
10 promptly as possible.

11 Ms. Hood, are you able to remain on the phone for a
12 while?

13 MS. HOOD: Yes, sir. And I'll tell you, I had some
14 problems, so he may be on the phone. I was on the phone, and
15 they didn't even know I was on the phone. So there might be a
16 problem with CourtCall.

17 THE COURT: Okay. We'll see if we can get it cleared
18 up.

19 Let's -- we'll come back to this. Okay? Go ahead,
20 Mr. Marinuzzi.

21 MR. MARINUZZI: All right. Your Honor.

22 THE COURT: Thank you, Ms. Hood.

23 MS. HOOD: Yes, sir.

24 MR. MARINUZZI: Thank you, Your Honor. The next item
25 on the agenda is an uncontested matter. It's the debtors'

1 motion to establish the bar date for filing proofs of claim and
2 manner and form of notice. No objections were received, Your
3 Honor. We filed a certificate of no objection earlier this
4 week. We made one minor modification to the form to
5 accommodate for the filing of 503(b)(9) claims. I'm happy to
6 provide the Court with a mark-up, but I believe copies were
7 delivered to chambers this morning or yesterday.

8 THE COURT: I don't think I saw it. If you have --

9 MR. MARINUZZI: Of course.

10 THE COURT: -- it why don't you hand it up, Mr.

11 Marinuzzi. Thank you. Thank you.

12 MR. MARINUZZI: Your Honor, on page 5 of the mark-up,
13 this was a request from the committee to clarify that the
14 holders of securities -- and these are the trust securities --
15 need not file a proof of claim. And that same language is also
16 on page 5 of the notice, Your Honor.

17 And, Your Honor, as I described earlier, on the bar
18 date form itself, we've now included language to accommodate
19 the filing of 503(b)(9) claims, both on the face of the form
20 and on the reverse of the form where the instructions are
21 found.

22 THE COURT: Okay. Just bear with me a second.

23 MR. MARINUZZI: Sure.

24 THE COURT: Okay. Am I correct, you added in the
25 black-line, in the order, in paragraph 5(d) -- is that a change

1 or not? I can't tell. They actually received, or was that
2 there?

3 MR. MARINUZZI: It was there, Your Honor.

4 THE COURT: Okay. It's just bolded and underlined to
5 make it clear. Okay.

6 All right. Does anybody wish to be heard with respect
7 to the proposed bar date order?

8 All right, it's approved.

9 MR. MARINUZZI: Thank you, Your Honor.

10 THE COURT: Thank you very much.

11 MR. MARINUZZI: Your Honor, that brings us to the next
12 uncontested item on the agenda, which is the examiner's motion
13 to retain Mesirow as financial advisor.

14 THE COURT: Okay.

15 MR. MARINUZZI: I'll cede the podium to counsel for
16 the examiner.

17 MR. GAYDA: Good morning, Your Honor. Robert Gayda
18 from Chadbourne & Parke for the examiner. We didn't receive
19 any objections to the application. We filed a certificate of
20 no objection on August 23rd. And no changes have been made to
21 the order.

22 THE COURT: All right. Does anybody wish to be heard
23 with respect to the Mesirow retention?

24 All right. It's approved. Thank you very much.

25 MR. GAYDA: Thank you, Your Honor.

1 MR. MARINUZZI: Your Honor, Mr. Rosenbaum advises me
2 that counsel is on the phone, they just can't get into the
3 call. So they're waiting and --

4 THE COURT: It doesn't do me any good.

5 MR. MARINUZZI: I know. It doesn't do any of us any
6 good. Hopefully CourtCall could figure it out. It'll call
7 back and find an operator to connect them. So --

8 THE COURT: Okay.

9 MR. MARINUZZI: -- we'll standby for that.

10 THE COURT: All right.

11 MR. MARINUZZI: Your Honor, that brings us to the
12 items that are contested on the agenda.

13 THE COURT: Yes.

14 MR. MARINUZZI: The first of which is the motion for
15 relief from stay filed by Julio Pichardo. And I'll cede the
16 podium to my colleague, Erica Richards, who will address the
17 Court on that matter.

18 THE COURT: Okay.

19 MS. RICHARDS: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MS. RICHARDS: Erica Richards of Morrison & Foerster,
22 appearing on behalf of the debtors. Your Honor, I believe Mr.
23 Pichardo is on the line.

24 THE COURT: All right. Mr. Pichardo, are you on the
25 phone?

1 MR. PICHARDO: Yes, I am, Your Honor. Good morning.

2 THE COURT: All right. This is your motion, so why
3 don't you go ahead and tell me whatever it is you want to tell
4 me.

5 First let me ask, Mr. Pichardo, you have counsel in
6 the case you filed in state court in Orange County California.
7 Am I correct in that?

8 MR. PICHARDO: Yes. I don't have counsel, though, for
9 the relief from the automatic stay.

10 THE COURT: Okay. That's fine. Go ahead.

11 MR. PICHARDO: It's pro se.

12 THE COURT: Go ahead.

13 MR. PICHARDO: GMAC, Your Honor, by unlawful means,
14 tried to put me and my family out of this home, even though I
15 begged them not to and I have sent documents to you, some of
16 it, which is document 1235, which shows numerous attempts by
17 GMAC to declare default on my loan, which I never missed any
18 payments. They also tried foreclosing. They tried to short-
19 sell my home. They put me in the hospital numerous time, Your
20 Honor, by this. And I advised them, and I said, what do I need
21 to do?

22 I sent them certified mail. I sent them registered
23 mail. I sent them faxes. I sent all the documents and said
24 why are you doing this? I have not missed a payment. Why are
25 you trying to put me out of my home? They said, that is

1 nothing to do with us. You have to move out of your home. You
2 will have to sell your house, whether it be by sheriff's sale,
3 and we are proceeding with foreclosure. And I said, but why,
4 tell me why? What is the reason?

5 And I advised them that they were making my condition
6 worse. They put me in a deep depression, Your Honor. They put
7 me in the hospital numerous times, for weeks at a time, away
8 from my two babies and my family. And I said why are you doing
9 this? Give me a reason. If they would have followed
10 procedure, they would have been fine, Your Honor. But they had
11 no reason whatsoever.

12 So they used aggressive measures to put me out of my
13 home. And I sent these documents showing what they have. I
14 don't have all the paperwork, but I do have some of it. My
15 attorney here has the full file. And I have sent you proof
16 that they're up to date, to today, denying that they ever did.
17 These documents on docket 1235 show their relentless attempt to
18 do all of this.

19 And I have contacted different means by faxes. I have
20 spent so much money from the family borrowed, just to keep this
21 problem away from my life, which has harmed me, Your Honor. I
22 didn't ask for this. I didn't do anything. I am -- I haven't
23 done anything to get this kind of assault from GMAC. I have
24 spoken with so many people; loan servicing keeps calling my
25 home, day and night. This is loan servicing department

1 contacting you concerning your payment and the procedures that
2 I will follow. And I call them back; what is going on? I had
3 requested the bank records showing that every payment I made
4 for fourteen years, I made with certified checks and with money
5 orders. And I said give me a reason why you're doing this.

6 They didn't care. All they wanted to do is put me out
7 of my home. And I said, but why? So I contacted counsel for
8 GMAC on the automatic stay to -- she sent me e-mail things.
9 She wanted to talk to me. I said okay. Here is the problem.
10 What is being done? Why is GMAC proceeding with this?

11 I have sent all the documents so many ways and still
12 to today they're saying they're denying doing this. But it's
13 in front of you, Your Honor. Those documents, document 1235,
14 shows what they were doing. And the rest of the documents are
15 on file. And I'm so heavily burdened. My wife keeps after me
16 with this medication that I have been prescribed, dozens of
17 them. Why allow GMAC to do this unlawfully? If there was any
18 means that they had, or resort to other procedure, which are
19 justified, I wouldn't mind. They could explain.

20 But then being put in the spot, I contacted the
21 Attorney General. The California Review Board has been looking
22 into this. The monitor program in California has been looking
23 into this. The counsel for GMAC says that they have no third-
24 party action. But there has been review of all these things,
25 and the Attorney General calls it that these are not supposed

1 to have been happened. These are irregularities and they're
2 looking into this too.

3 So, Judge, please, what is happening here? Why are
4 they allowed to break the law and blanket themselves with the
5 stay?

6 THE COURT: All right. Anything else, Mr. Pichardo?

7 MR. PICHARDO: I'm sorry?

8 THE COURT: Anything else you want to add?

9 MR. PICHARDO: I have also received from Sverson
10 Werson, their response to the action here. And they are
11 asserting that we proceed to prosecute portion of this lawsuit.
12 Now they're saying no. And I have it on document 1273 sent to
13 you, where they say, "The remaining claims asserted by your
14 lawsuit ...Permitted Claims under the Final Supplemental Order
15 you may continue to prosecute these claims in accordance with
16 the terms." Now, they're saying no.

17 And I have a question, Your Honor. Can GMAC be
18 allowed to break the law and then cover or blanket themselves
19 with a stay?

20 THE COURT: Mr. Pichardo, let me ask you a couple of
21 questions. Do you still live in your house?

22 MR. PICHARDO: Yes, Your Honor. I had to spend quite
23 a lot of money from my family borrowed, to start all these
24 complaints to different agencies here. In California agencies
25 are saying to me, number one, go ahead and file the claim.

1 Number two go ahead in order to legitimize your claim before
2 GMAC comes up with anything else. Go ahead and bring this
3 over. And I don't have the money to get an attorney and
4 represent me in your court, Your Honor. I have spent so much
5 money from my family and now I have to do this myself.

6 THE COURT: All right.

7 MR. PICHARDO: But they did try. And you can see in
8 those documents: you're being foreclosed; you must sheriff's
9 sale your home; and your loan is in default. And even if I
10 provided all those documents, they still pursued it, just a
11 couple of months ago, until we filed. The calls were coming in
12 from GMAC harassing and telling me you have to get out of your
13 house.

14 THE COURT: All right. Thank you, Mr. Pichardo.

15 All right. Counsel?

16 MS. RICHARDS: Your Honor, the debtors are sympathetic
17 to the hardships that Mr. Pichardo has described for you.
18 However, they vehemently deny that those hardships --

19 THE COURT: Well, let me ask this. California is a
20 nonjudicial foreclosure state. Has foreclosure taken place
21 with respect to Mr. Pichardo's home?

22 MS. RICHARDS: It has not, Your Honor. The debtors
23 reviewed their file. There's no foreclosure pending. There
24 has never been a foreclosure pending. As Mr. Pichardo
25 indicated, the debtors believe he is still in his house.

1 THE COURT: All right. Anything else you want to add?

2 MS. RICHARDS: Unless Your Honor has further
3 questions, I would say that the debtors are concerned that Mr.
4 Pichardo's filing was itself a violation of the automatic stay,
5 and they would ask that Your Honor not invite other creditors
6 to similarly disregard the automatic stay.

7 THE COURT: All right. I'm going to take the matter
8 under advisement, and I'll issue an appropriate order. Thank
9 you very much.

10 MS. RICHARDS: Thank you.

11 THE COURT: Thank you, Mr. Pichardo.

12 MR. PICHARDO: Okay. Thank you, Judge.

13 THE COURT: All right. Mr. Marinuzzi?

14 MR. MARINUZZI: Your Honor, I'm advised that Jon
15 Patterson from the BABC firm is now through and on the line, so
16 we can revisit that item on the agenda, if the Court would
17 like.

18 THE COURT: All right. So we're going back to -- let
19 me find it on the agenda -- this was --

20 MR. MARINUZZI: It's on page 3, item 2.

21 THE COURT: Yes. This is with respect to GMAC
22 Mortgage LLC v. Silmon, S-I-L-M-O-N, pending in the Circuit
23 Court of Jefferson County Alabama.

24 Mr. Patterson?

25 MR. PATTERSON: Yes, sir, I'm here.

1 THE COURT: Okay. Mr. Marinuzzi indicated that you
2 were able to hear what was going on in court but not able to
3 respond. Is that correct?

4 MR. PATTERSON: I wasn't on at all, but I had received
5 some e-mails kind of indicating what was said.

6 THE COURT: All right. So just very quickly; I won't
7 rehash the whole thing. The way this conference came about is
8 I received a telephone call last week from Judge Still, Judge
9 Nicole Still, before whom the matter is pending. She told me
10 that there's a -- GMAC has filed a motion for summary judgment
11 that's pending before her. She also told me that there's a
12 trial scheduled, a bench trial scheduled for September 17th,
13 that she's received a copy of the supplemental servicing order,
14 but is unclear what it is that she's permitted to go ahead and
15 decide.

16 I raised the question earlier whether this really
17 isn't an appro -- particularly in light of the very rapidly
18 approaching trial date, and the fact that it arises in an
19 action that GMAC has commenced, whether this is not -- isn't
20 this an appropriate action for the stay to be lifted.

21 Judge Still indicated that the same claims are
22 asserted as counterclaims and as affirmative defenses to GMAC's
23 action to regain possession of the property, as to which
24 nonjudicial foreclosure has been completed. So I -- when I
25 talked to Judge Still I suggested that she talk to counsel in

1 the case and have them contact Morrison & Foerster and set this
2 for the conference today. So we're here.

3 So I guess my question is to you, can you describe for
4 me what you believe the status of the matter is? What's
5 covered by the summary judgment? What is the September 17th
6 trial supposed to cover? And Ms. Silmon's counsel is on the
7 phone as well. Go ahead.

8 MR. PATTERSON: Yes, Judge. This is Jon Patterson for
9 GMAC. Just quickly the general status is, you are correct,
10 summary judgment is pending. And we had filed summary
11 judgment -- and just to add one additional thing, this case
12 also involves Mortgage Electronic Registration Systems, who is
13 a co-defendant as well. And so summary judgment was filed on
14 behalf of GMAC and Mortgage Electronic Registration Systems.

15 THE COURT: Are you representing MERS as well, Mr.
16 Patterson?

17 MR. PATTERSON: I am. Yes, sir. And so summary
18 judgment was filed on GMAC's affirmative eviction claim, as
19 well as to certain counterclaims that GMAC believed were
20 allowed to proceed forward under the supplemental servicing
21 order, and then as to all counterclaims against MERS.

22 And so that is pending right now. And the trial date
23 of September 17th remains set, even though Judge Still
24 indicated at the last hearing that that -- she would very
25 likely push that trial date, even if just for a few months,

1 depending on the outcome of this hearing and how she's directed
2 to proceed.

3 THE COURT: All right. Anything you want to add, Mr.
4 Patterson? Just could you -- what Judge Still had indicated to
5 me was that the same matters were asserted as both affirmative
6 defenses and as counterclaims.

7 MR. PATTERSON: That's exactly right. And I can just
8 briefly tell you that effectively how this worked is that GMAC
9 filed their affirmative eviction claim saying, look, by virtue
10 of the foreclosure deed we own the property. You need to get
11 out. We have to sue to get you out. They answered with
12 effectively a host of affirmative defenses which are the
13 standard ones we see in foreclosure cases, which is: there was
14 no default; there was an improper acceleration of the note; you
15 didn't give me proper pre-foreclosure loss mitigation
16 alternatives; you didn't comply with servicing regulations; you
17 don't have standing to foreclose.

18 They then -- they list those as affirmative defenses,
19 and then they filed a same document, a counterclaim, which
20 reiterates all those affirmative defenses as their allegations
21 in their counterclaim, and then filed various claims arising
22 thereunder.

23 THE COURT: Am I correct that Alabama law recognizes
24 an affirmative claim for wrongful foreclosure?

25 MR. PATTERSON: That is correct.

1 THE COURT: All right. And is that asserted as both
2 an affirmative claim and affirmative defense to your action to
3 recover possession?

4 MR. PATTERSON: It is.

5 THE COURT: All right. Ms. Hood, I know you're on the
6 phone for the defendant/counterclaimant. Do you want to go
7 ahead and respond?

8 MS. HOOD: Well, Your Honor, I mean, just like we
9 said, there's a complete understanding of what's going on and
10 my law partner Kenneth Lay is on the phone with me, as I also
11 indicated.

12 The problem is, is that these are -- they are so
13 intertwined; and because we don't -- because it is nonjudicial,
14 you never really attack these foreclosures. Most of the time,
15 when people get to us, they -- the actual underlying
16 foreclosure itself has never been addressed. And so the
17 foreclosure -- if the underlying foreclosure is improper then
18 that ejectment that they are seeking obviously they're not
19 entitled to. So we have to go under all that. And that's
20 where the problem lies.

21 And so he is correct that you have the defenses that
22 arise out of the same transactions, the same facts, and then --
23 which would be an affirmative defense to the actual foreclosure
24 itself, and then the same actions lead to the counterclaims of
25 negligence and wantonness on GMAC, and the wrongful

1 foreclosure, which also, if correct, would entitle the client
2 to damages. So that's where the crux of all this is.

3 THE COURT: All right. Thank you, Ms. Hood.

4 Mr. Marinuzzi, I mean, you know, not just in this
5 case, but in others as well, I've grown very accustomed to the
6 Sonnax standards. And while I don't have a lift stay motion
7 currently pending before me here to rule on, this almost seems
8 to cry out to lift the stay to allow the state court to go
9 ahead and rule in its entirety on the summary judgment motion,
10 and if necessary, go ahead and try the case on September 17th
11 or if the case is adjourned for a short period thereafter.

12 Obviously, at most, the state court can fix the amount
13 of damages that would be filed as a claim here. But the Sonnax
14 factors typically -- I think the first is whether there's
15 likely to be a speedy resolution of the whole matter. Well,
16 there would be seem to be in this situation.

17 I think it would be -- I certainly wouldn't want to
18 be -- I wouldn't retry something that Judge Still had tried.
19 Since the same essential claims are asserted as affirmative
20 defenses and counterclaims for damages, it seems to me that she
21 will effectively decide liability, if any, with respect to the
22 counterclaims, which would leave damages.

23 It seems to me, inefficient then, to tie her hands.
24 And it's a bench trial. So it's not a question of a jury.
25 That why shouldn't she go ahead and just handle the matter

1 expeditiously. If there's an affirmative damages claim that
2 will be awarded, it would fix the amount of the claim that
3 Silmon would have.

4 MS. HOOD: Your Honor, I'm sorry to interrupt you.
5 But we do have a demand for a jury trial in our answer.

6 THE COURT: You know, when talked to Judge Still last
7 week, that was -- I'll just tell you that that's inconsistent
8 with what she told me then. But --

9 MS. HOOD: Okay. I just wanted to bring it to your
10 attention.

11 THE COURT: Okay. But Mr. Marinuzzi, why -- look, if
12 necessary, I'm going to tell Ms. Hood go ahead and file the
13 motion for lift stay, I will set it expeditiously, and we'll go
14 ahead, if you can't -- it seems to me that the debtor ought and
15 try to work out an appropriate stipulation and order in this
16 matter that would allow Judge Still -- I mean, this is very
17 unlike any of the others.

18 Every other one that's come before me, a complaint's
19 been filed, some of them in violation of the automatic stay;
20 most of them with no discovery; no motion practice; trial is
21 somewhere in the very far distance. Requiring a party to
22 submit to the claims allowance process makes full sense in
23 those situations. This comes much closer to the case where one
24 of the debtors is trying to use the automatic stay as both a
25 sword and a shield, something I will not permit.

1 MR. MARINUZZI: Your Honor, we recognize that. So
2 we'll talk to our client. We'll talk to the defendant in the
3 action, see if we can't come to some resolution.

4 I'm not even sure we're really talking about a lifting
5 of the automatic stay here, because the counterclaims that are
6 being asserted are the exact same facts that would be asserted
7 to defeat. So it seems to me it's covered by the order anyway.

8 THE COURT: Well, other than the fact that the
9 counterclaims seek affirmative damages. I mean, the judge
10 should only try it once. I mean, whoever the judge is, it
11 should only be tried once. That's what judicial efficiency
12 really requires. Particularly when this all arises on GMAC's
13 claim against a borrower.

14 So, Ms. Hood, I think you and Mr. Patterson, and
15 whether it's Mr. Marinuzzi or Mr. Rosenbaum, whoever from
16 Morrison & Foerster, you ought to try and confer today by
17 telephone, if possible, and see whether you can resolve this
18 issue. If you can't, Ms. Hood you're going to have to -- and
19 you want to go ahead and proceed, you're going to have to file
20 a motion to lift the stay. It doesn't have to be a lengthy
21 motion.

22 On the court's website there are a whole list of
23 Residential Capital opinions that I've written on motions to
24 lift the stay, usually denying them, in some instances granting
25 them in part. But it does seem to me, Mr. Marinuzzi, this is

1 factually and legally different than those cases.

2 You know, in Jackson, in the Corla Jackson matter, it
3 specifically said, well, if GMAC seeks to recover possession
4 then the result may be different. Well, this is that one step
5 further along case.

6 MR. MARINUZZI: We understand, Your Honor.

7 THE COURT: Okay?

8 MR. MARINUZZI: We understand.

9 THE COURT: So, Ms. Hood, do you understand? You'll
10 confer with Mr. Patterson; and hopefully either Mr. Marinuzzi
11 or one of his colleagues can arrange a call today if possible.
12 See if you can work out a stipulation as to how this matter
13 should proceed. If it can't, talk with them about how we'll
14 get this on the court's docket every quickly. Okay?

15 MR. MARINUZZI: That's fine, Your Honor.

16 MS. HOOD: Yes, sir.

17 THE COURT: Thank you very much for participating Mr.
18 Patterson and Ms. Hood.

19 MR. PATTERSON: Thank you, Judge.

20 THE COURT: Okay. You're excused from the hearing if
21 you don't want to remain on the line.

22 MS. HOOD: Thank you.

23 THE COURT: Mr. Marinuzzi, go ahead.

24 MR. MARINUZZI: Your Honor, that brings us to the
25 final item on the agenda, which is the debtors' motion to

1 establish procedures for the sale of de minimis assets. And
2 for that, I will turn the podium over to Samantha Martin.

3 THE COURT: Thank you.

4 MS. MARTIN: Good morning, Your Honor. Samantha
5 Martin from Morrison & Foerster on behalf of the debtors.

6 By this motion, the debtors seek to implement
7 procedures for the sale of de minimis assets in order to
8 streamline the costs and delay associated with seeking court
9 approval for each individual sale. I can walk Your Honor
10 through the procedures if you like.

11 THE COURT: I did look at the proposed order fairly
12 carefully. But why don't you just, for the benefit of those
13 who are in court and might not have seen it, just describe
14 briefly how it would work?

15 MS. MARTIN: Sure. Your Honor, the procedures are
16 divided into two parts. The first relates to sales with an
17 aggregate price of equal to or less than two and a half million
18 dollars. These sales will be done on five business days'
19 notice. And the notice would be given to the United States
20 Trustee, the committee, Ally Financial, Barclays, the junior
21 noteholders, and all known parties asserting liens against the
22 assets.

23 The second part relates to sales with an aggregate
24 sale price of greater than two and a half million but less --
25 up to fifteen million dollars. And these sales will occur on

1 ten business days' notice. And the notice parties would be the
2 same, with the addition of the U.S. Attorney's Office and
3 counterparties to executory contracts or unexpired leases, to
4 the extent we seek to assume, assign, or reject contracts in
5 connection with the sale.

6 Your Honor, the debtors are seeking to sell these
7 assets under the procedures free and clear of all liens,
8 claims, and encumbrances. The debtors have agreed to consult
9 with the committee as soon as practicable upon the commencement
10 of any marketing process for a de minimis asset sale. To the
11 extent the debtors are seeking to sell any collateral on which
12 the debtors have granted a security interest to Ally Financial
13 or Ally Bank, the debtors will also consult with those parties
14 in connection with selling such property, pursuant to these
15 procedures.

16 THE COURT: Let me just ask you this question. Tell
17 me, you have these tiers depending on sale price. Are there
18 differences as to which parties are served if a proposed sale
19 is below two and a half million dollars, if it's between two
20 and a half and fifteen, and if it's above fifteen.

21 MS. MARTIN: Most of the parties will be served in the
22 event of any sale. The primary difference is the
23 counterparties to executory contracts and unexpired leases.
24 And the reason for that is because we only intend to assume,
25 assign, or reject on ten days' notice. And so that wouldn't

1 even apply under the five-day notice sales.

2 But each of the U.S. Trustee, the committee, Ally,
3 Barclays, the junior notes, and all known parties asserting
4 liens will get notice of any sale from zero to two and a half
5 million or up to fifteen million dollars.

6 THE COURT: Okay. Bear with me another second here.

7 MS. MARTIN: We have revised the order following
8 discussions with the parties after the initial filing. I
9 submitted a black-line copy and I attached it to our reply. I
10 can bring Your Honor.

11 THE COURT: That's what I think I'm looking at --

12 MS. MARTIN: Okay.

13 THE COURT: -- is the black-line. Just bear with me.

14 MS. MARTIN: Sure.

15 (Pause)

16 THE COURT: What's the manner in which you contemplate
17 de minimis asset sales being conducted? I mean, are there
18 going to be -- are you going to retain auctioneers? I mean
19 this does not -- this proposed order would not relieve the
20 debtors of any obligation if you use an auctioneer to seek
21 their retention. Am I correct?

22 MS. MARTIN: Yes, that is correct. I believe we have
23 that in a footnote somewhere. We currently don't have plans
24 for any of our anticipated sales to use brokers at this time.
25 In the event that we do decide to use third-party brokers, we

1 would file a retention application, as I understand this Court
2 requires.

3 THE COURT: Yes.

4 MS. MARTIN: And we do have some provisions in the
5 order where we seek to have authority to pay the commissions
6 once they're properly retained, and also to the extent that
7 they are required to be retained under the procedures. Because
8 I understand that there may already be orders on the docket
9 that permit certain brokers to be retained in some instances.

10 But this order only seeks approval for the fee -- the
11 payment of commissions specifically.

12 THE COURT: All right. Does anybody else wish to be
13 heard with respect to the motion to establish procedures for de
14 minimis asset sales?

15 MS. RINGER: Good morning, Your Honor. Rachael Ringer
16 from Kramer Levin on behalf of the creditors' committee. Your
17 Honor, we reviewed the motion and we've been working with the
18 debtors. We provided some comments both before it was filed,
19 and we've reviewed the revised order and provided comments that
20 were reflected in the black-line that was attached to the
21 debtors' reply. With that, we do not object to entry of the
22 order.

23 THE COURT: All right. Thank you.

24 Does anybody else wish to be heard with respect to the
25 motion regarding de minimis asset -- procedures for de minimis

1 asset sales?

2 All right. The last comments I would make; there was
3 a statement filed by Wendy Alison Nora. And then this morning,
4 I saw she filed an additional statement --

5 MS. MARTIN: Yes, Your Honor.

6 THE COURT: -- regarding the sale. The debtors'
7 response to her initial statement made clear that in the event
8 of any effort to sell any interest in Ms. Nora's property or
9 former property, whichever it may be, that the debtor would
10 give notice to Ms. Nora in advance of any such effort. Is that
11 correct?

12 MS. MARTIN: To be a bit more precise, Your Honor. We
13 currently have the ability to sell real estate owned property
14 under certain orders that this Court has already entered.

15 THE COURT: Right.

16 MS. MARTIN: To the extent that we seek to sell any
17 real estate owned property pursuant to the de minimis asset
18 sale procedures, we will provide Ms. Nora with the requisite
19 notice under these procedures.

20 THE COURT: Under any other -- just so we're clear.
21 Is it your position that there's another order that's on the
22 docket that would permit you to sell Ms. Nora's property or
23 former property without giving her notice?

24 MS. MARTIN: The property ha -- it's my understanding
25 that the property has already been foreclosed upon and it is

1 real estate owned property. Ms. Nora is disputing some aspects
2 of the foreclosure that occurred. And the nongovernmental
3 servicing order currently permits the sale of real estate owned
4 property. We are not currently planning to sell hers at this
5 time, given the outstanding dispute. But in the event, as time
6 goes on --

7 THE COURT: Let me be crystal clear.

8 MS. MARTIN: Yes.

9 THE COURT: Do you agree that if you go to sell Ms.
10 Nora's property or former property -- I understand there's a
11 dispute whether she continues to have any interest in the
12 property -- do the debtors agree that they will give Ms. Nora
13 notice of any intention to sell her property?

14 MS. MARTIN: Yes, Your Honor.

15 THE COURT: Okay. I don't want -- it may be that
16 exist -- prior orders give you the authority to do so. I'm not
17 altering any of those orders. She's now filed two statements
18 with respect to this specific motion and the issue as to
19 whether she would be given notice of any effort to sell the
20 property. It certainly wasn't crystal clear to me in reading
21 her statements and reading the debtors' response that the
22 debtor was taking the position well, they'll give her notice if
23 you go to sell the property under the de minimis asset sale
24 procedures, but you won't give her notice if you go to sell it
25 under any other.

1 So to avoid -- I'm not making any decisions as to
2 whether she has an interest, doesn't have an interest, any of
3 that; but I just want to be clear that at least with respect to
4 her asserted interest in this property, she will receive notice
5 before any effort by the debtor to sell the property. And the
6 answer to that is?

7 MS. MARTIN: Yes, Your Honor.

8 THE COURT: Okay. All right. On that basis, the
9 motion is granted.

10 MS. MARTIN: Thank you.

11 THE COURT: Mr. Marinuzzi?

12 MR. MARINUZZI: Your Honor, I believe that concludes
13 the agenda for today. Nothing further from me unless the Court
14 has any questions.

15 THE COURT: Anything you want to update me on status,
16 Mr. Marinuzzi?

17 MR. MARINUZZI: Status, Your Honor. As Your Honor is
18 aware, we filed a request for an extension of exclusivity
19 asking for it to be heard on the 11th. Attached to that --

20 THE COURT: That was one of those matters, I think I
21 said yes, even though it was a very full docket on the 11th.

22 MR. MARINUZZI: And we appreciate that, Your Honor.

23 We are working on pleadings that we intend to file
24 Tuesday of next week that relate to a hot-button issue in the
25 case, and that is the consent order/DOJ settlement and in

1 particular expenditures required to be made under those orders
2 by the debtors, with a focus, in this case, on the payment of
3 fees for PricewaterhouseCoopers, who under the --

4 THE COURT: I think you wanted that on for the 11th,
5 and I think I said no.

6 MR. MARINUZZI: And Your Honor did say no, and it'll
7 be heard later on in the month.

8 THE COURT: There's nothing particular about the
9 Pricewater -- it's just a very full agenda for the debtor.

10 MR. MARINUZZI: Understood, Your Honor. And we also
11 have a number of motions to lift the stay that Your Honor has
12 seen. Those will be heard on the 11th. We expect that that
13 will be quite a full hearing.

14 I don't see anything else that I think is appropriate
15 to address with the Court at this time. But I'm sure on the
16 11th, we'll have more to discuss.

17 THE COURT: I'm going to raise this now. I don't
18 necessarily expect a response from you, Mr. Marinuzzi. As you
19 probably know, yesterday afternoon, I issued an opinion denying
20 the debtors' motion to approve the KEIP -- denied it without
21 prejudice, and encouraged that if it is going to be -- if a
22 KEIP motion is going to be renewed -- and I can understand that
23 time is of the essence if any of the KEIP awards are to be
24 triggered by the auction sales which are scheduled for late
25 October.

1 So if the debtor -- hopefully the debtor, if it
2 chooses to modify the plan, will discuss with -- on that prior
3 plan, it was the U.S. Trustee was the sole objector to it --
4 will work with the U.S. Trustee -- and Mr. Driscoll's here --
5 to see whether you can iron out any disputes. If you do, if
6 you are able to arrive at a plan as to which the U.S. Trustee
7 certainly agrees, I'll permit any new plan to come out on very
8 short notice. We can specially set it. I just want to make
9 clear.

10 The Court's docket is crowded, but I understand that
11 this is an important issue for the debtor. Again, it's up to
12 the debtor whether it's going to seek to modify a plan, see if
13 it can get a plan approved. But to the extent a plan is linked
14 to the results of an auction, it obviously is important that
15 there be plenty of notice, that it happen quickly. So I'd just
16 indicate that I'm certainly -- if you're going to try and alter
17 it, work with the U.S. Trustee to see whether you can come up
18 with a consensual plan.

19 I would just note, that's exactly what happened in
20 Borders. In Borders, it wasn't until the third version of the
21 plan that the U.S. Trustee was satisfied, withdrew its
22 objection. That's the one that was approved. And it's
23 addressed in the written opinion the Court wrote. So the U.S.
24 Trustee can be satisfied.

25 MR. MARINUZZI: Your Honor, we're already working on

1 it.

2 THE COURT: Okay.

3 MR. MARINUZZI: Thank you.

4 THE COURT: Okay. That's the only thing I have. Mr.
5 Mannal?

6 MR. MARINUZZI: Thank you.

7 MR. MANNAL: Your Honor, Doug Mannal from Kramer Levin
8 on behalf of the committee. Just briefly, Your Honor. Mr.
9 Marinuzzi mentioned the exclusivity motion that was on file.
10 And currently, I think, our objection deadline is Tuesday the
11 4th.

12 THE COURT: I think we extended it by -- we extended
13 the date by one day or something?

14 MR. MANNAL: I understand from my colleague, I think
15 it was extended till noon on the 5th. We have a committee
16 meeting -- people are flying in from out of town -- starting at
17 10 o'clock in the morning on the 5th, and this is one of the
18 issues we'd like to discuss. I was hoping we could get that
19 pushed perhaps to the end of the day. I don't know if that was
20 acceptable to counsel or --

21 THE COURT: You're not leaving me any time. If you
22 file an objection -- you know, when I take the bench, I want to
23 be fully prepared. And I tried -- I pushed it a little bit to
24 try and accommodate -- I mean, do a telephone conference with
25 the committee in advance. I'm not moving it any further.

1 MR. MANNAL: Okay.

2 THE COURT: I need -- if there are going to be
3 objections, I need to have them. The debtor needs to be able
4 to respond to them. I need to be able to be fully prepared for
5 them.

6 MR. MANNAL: Absolutely, Your Honor. So is it
7 possible that we could put it to the afternoon or is --

8 THE COURT: Two o'clock.

9 MR. MANNAL: Two o'clock. Thank you very much, Your
10 Honor.

11 THE COURT: Okay. Mr. Marinuzzi?

12 MR. MARINUZZI: Your Honor our reply is due Friday at
13 noon. We hope 2 o'clock means 2 o'clock. That's all I'm
14 asking. Thank you.

15 THE COURT: I'm not moving it beyond 2 o'clock.

16 MR. MARINUZZI: Okay.

17 THE COURT: I want to make it crystal clear. Okay?
18 Hopefully, you ought to be able to resolve the issues around
19 the exclusivity motion. But I don't need to hear anything
20 further about it, Mr. Mannal.

21 MR. MARINUZZI: Okay, thank you, Your Honor.

22 THE COURT: Okay.

23 MR. MARINUZZI: I'm hopeful we will.

24 THE COURT: I'm just -- you know, that's why I do not
25 let -- in my case management orders, I do not let the debtor

1 agree to move dates. It's precisely for this reason. Because
2 I'm the one who gets caught in the trap with that. Okay.

3 MR. MANNAL: Understood, Your Honor.

4 THE COURT: Okay. All right. We're adjourned. Thank
5 you very much.

6 MR. MARINUZZI: Thank you, Your Honor.

7 (Whereupon these proceedings were concluded at 10:54 AM)

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I N D E X

RULINGS

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Debtors' bar date order is approved.	16	8
Examiner's application to retain Mesirow	16	24
Financial Consulting is approved.		
Debtors' de minimis sales procedures motion	38	8
is granted.		

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

AAERT Certified Electronic Transcriber CET**D-569

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